

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 15, 2007 Session

**STATE OF TENNESSEE EX REL. SANDRA J. FRANKLIN v. KEVIN
HURLEY**

**Appeal from the Juvenile Court for Grainger County
No. CS-6-83 Joe Wayne Wolfenbarger, Judge**

No. E2007-00009-COA-R3-JV - FILED AUGUST 28, 2007

This case involves the issue of a father's alleged obligation to pay child support for a period of approximately a year and a half. Because we hold that the trial court failed to correctly apply the concept of deviation under the Child Support Guidelines, we vacate so much of the judgment of the trial court as fails to order the father to pay child support for the period April 16, 2005, to October 2, 2006. This case is remanded for further proceedings.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Juvenile Court
Vacated in Part and Affirmed in Part; Case Remanded with Instructions**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and SHARON G. LEE, J., joined.

Robert E. Cooper, Jr., Attorney General and Reporter, and Juan G. Villaseñor, Assistant Attorney General, Nashville, Tennessee, for the appellant, State of Tennessee *ex rel.* Sandra J. Franklin.

Kevin Hurley, appellee, pro se.

MEMORANDUM OPINION¹

The State of Tennessee *ex rel.* Sandra J. Franklin ("the State") filed a petition in this case seeking support for Tyler Hurley (DOB: June 15, 1990) – the son of Kevin Hurley – who is in the

¹ Rule 10 of the Rules of the Court of Appeals provides as follows:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION", shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

custody of the child's great-aunt, the relator, Sandra J. Franklin. At issue on appeal is whether the father of the child should be obligated to pay child support for the period beginning April 16, 2005 and ending October 2, 2006. The trial court refused to order support for this period² because it found that "no retroactive support is owed to the State for Familie's [sic] First benefits, and [the State] failed to timely petition this court for support." For these reasons, the trial court deviated from the Child Support Guidelines and refused to award any child support for any period of time prior to October 2, 2006, the date the State filed its petition.

The specific reasons given by the trial court to justify its deviation from the Guidelines do not constitute legal bases for deviation. *See* Tenn. Comp. R. & Regs. 1240-2-4-.07 (2007). Accordingly, the judgment of the trial court with respect to the period of time at issue is vacated and this case is remanded to the trial court to further consider whether the father, Kevin Hurley, should be obligated to pay support for the period April 16, 2005 to October 2, 2006. In its reconsideration of this matter, the trial court is instructed to strictly apply the applicable provisions of the Child Support Guidelines, particularly Tenn. Comp. R. & Regs. 1240-2-4-.06 (2007) and Tenn. Comp. R. & Regs. 1240-2-4-.07. Except as vacated herein, the judgment of the trial court is affirmed. Exercising our discretion, we tax the costs on appeal to the State of Tennessee *ex rel.* Sandra J. Franklin.

CHARLES D. SUSANO, JR., JUDGE

²At trial, the State sought support going back to 2000. On appeal, the State concedes that the only relevant period is the one discussed in this opinion.